IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1083 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VALODARA C. K.

Versus

AHMEDABAD MUNI. CORPORATION

Appearance:

1. Special Civil Application No. 1083 of 1989
Mr. Saurabh J. Mehta for MR YN OZA for
Petitioner No. 1-59
Mr. Nikhil Kariel for MR BP TANNA for
Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 08/07/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE K.M.MEHTA)

1. Valodara C.K. and others, petitioners, have filed the present writ petition under Article 226 of the Constitution of India with a prayer that this Court may issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus quashing and setting aside the action of the Ahmedabad Municipal Corporation ('Corporation' for short) of filling up the vacancies in the cadre of the clerk by way of direct recruitment and directing the respondent-Corporation not to fill any vacancy of the post of clerk in the establishment of the respondent-Corporation unless and until the petitioners are being considered and promoted to the post of clerk by applying the criteria of seniority-cum-merit. The petitioners have further prayed to quash and set aside the select list prepared by the Staff Selection Committee vide resolution No.30 dated 9.1.1989 and to direct the respondent-Corporation to prepare a select list in accordance with seniority of Class IV employees and absorb them in the cadre of clerk. The petitioners have further prayed that the respondent be directed to frame fresh recruitment rules for the post of clerk giving ratio of promotion at least to the extent of 50% for promotees from amongst Class IV employees working in the respondent-Corporation on the criteria of seniority-cum-merit.

2. When the matter had come up for admission/hearing before this Court on February 8, 1989, the Court (Coram: R.J. Shah, J. as he then was) passed the following order:

> "Notice, and notice as to interim relief also, to be made returnable on 13.2.1989. Ad-interim relief to the effect that select list prepared by Staff Selection Committee vide Resolution No.30 dated 9.1.1989 referred to in paragraph 7(F) be not implemented till 15.2.1989.
> Direct service permitted."

From the record, it appears that the said ad-interim relief was continued from time to time up to March 7, 1989. Thereafter, the matter was admitted by the Court (Coram: A.P. Ravani, J. as he then was) by its order dated July 31, 1990, and, at the request of the learned advocates appearing for both the parties, the matter was referred to the Division Bench. That is how, the matter has come up for final hearing before this Court.

3. It is the case of the petitioners that they were appointed in Class IV service of the respondent-Corporation after due process of selection and each of them was appointed for regular service in the establishment of the respondent-Corporation. Initially, the petitioners were appointed in Class IV service, but, considering the fact that the petitioners are educationally qualified and possessing all the eligibility to perform duties of clerical cadre, they are compelled to perform duties as clerk time and again. From the record, it appears that one Chhanabhai was appointed in the respondent-Corporation on 16.6.1966 and was confirmed on 1.4.1978. It is the case of the petitioners that the petitioners were assigned the designation of Class IV employees and were also paid salary of Class IV employees. They were also given ad-hoc promotion to the post of clerk and the petitioners had worked with utmost sincerity and to the satisfaction of their higher authorities. It is the case of the petitioners that the petitioners are qualified and eligible for being appointed in Class III service, more particularly in clerical cadre in the establishment of the respondent-Corporation.

4. It is the case of the petitioners that originally the posts of clerks were filled in only by way of direct recruitment and there had been no promotional avenues for the employees of Class IV service in the respondent-Corporation. Thereafter, the respondent Corporation passed resolution No.306 dated 22.6.1979 introducing reservation of 10% of the post of in the cadre of clerk to be filled in from amongst class IV employees working in the establishment of the respondent-Corporation. Therefore, it is obligatory on the part of the respondent-Corporation to maintain the ratio of promotees by filling up the vacancies of clerks in the establishment of the respondent-Corporation. It is the case of the petitioners that the respondent-Corporation has not maintained the ratio of promotees vis-a-vis direct recruits. The respondent-Corporation issued a public advertisement dated 4.1.1989 inviting applications from eligible persons for preparing select list for filling up vacancies of clerks in the respondent-Corporation. It is the case of the petitioners that the ratio of promotees specified by the respondent-Corporation is of 10% which is much more less than what is being introduced by the State Government and the respondent-Corporation has utterly failed to maintain the ratio of promotee for filling up vacancies of clerk in the establishment of the respondent-Corporation. Being aggrieved by the same, the

petitioners have filed the present petition for the reliefs as mentioned in paragraph 1 hereinabove.

5. In response to the notice issued by this Court, Mr. A.N. Vyas, Deputy Municipal Commissioner (Admn.), has filed affidavit-in-reply on behalf of the respondent-Corporation on February 16, 1989. In the affidavit-in-reply, the respondent-Corporation disputed the denied the averments made in the memo of the petition. It is pointed out that, upto 1979, there was hundred per cent direct recruitment. The condition was waived by the resolution of the Board and also apropos the order passed by this Court (Coram: P.D. Desai, J. as he then was) and the selections made thereafter in 1983 and 1989 have strictly followed the principles. The criteria applied is merit and due regard is given to the seniority. It is further pointed out in the affidavit-in-reply that, as there are 50 cadres of class IV employees, it is difficult to prepare one common seniority list for them. It is further pointed out that 56 appointments of clerks have already taken place apropos the selection and as a matter of fact they have taken over the charge long back much prior to filing of the petition and, therefore, there is no question of non-implementation of the select list. The appointment order of 56 persons is annexed with the affidavit-in-reply. It was further submitted that chance was given to the employees of the respondent-Corporation, and they had applied through proper channel and some of the petitioners herein had also applied for but they were not selected and, therefore also, the petitioners cannot, at this stage, challenge the selection made by the respondent-Corporation.

6. Learned advocate Mr. Saurabh J. Mehta, for learned Senior Advocate, Mr. Yatin N. Oza, has appeared for the petitioners and reiterated the contentions raised in the memo of the petition, as narrated hereinabove.

7. Learned advocate Mr. Nikhil Kariel, for Senior Advocate, Mr. B.P.Tanna, has appeared for the respondent-Corporation. He has also reiterated the contentions raised in the affidavit in reply filed on behalf of the respondent-Corporation.

8. We have considered the rival submissions made by the learned advocates for both the parties. In view of the fact that the respondent-Corporation has made 10% reservation pursuant to the order passed by this Court, which is also annexed with the affidavit-in-reply, it is difficult to hold that the action of the

respondent-Corporation having 10% reservation is arbitrary or illegal. In fact, some of the petitioners had also applied through proper channel in pursuance of the advertisement issued by the Corporation but they were not selected and, therefore, it is not open to them to challenge the action of the respondent-Corporation of having 10% reservation. The learned advocate for the respondent-Corporation has submitted that the respondent-Corporation had already made all the appointments and, before filing of the present writ petition, the candidates were already selected and appointed on the post and they had already started working. Under the circumstances, the petitioners are not entitled to any relief much less as prayed for in the present petition at this stage. In our view, the respondent-Corporation has given very cogent and convincing reasons for appointment of the persons. It may be noted that though the Court had initially granted ad-interim relief, but, after filing of the affidavit-in-reply, no interim relief was continued in the present proceeding. Under the circumstances and in view of the fact that the candidates had been selected and appointed in the year 1989 and they have worked uptil now, it will not be possible for us to disturb the appointments of those candidates more particularly when they are not before this Court. In view of the same, we do not find any merit in the present petition and the petition deserves to be dismissed.

9. In the result, the petition fails and is hereby dismissed. Rule is discharged with no order as to costs.

(D.K. Trivedi, J.)

(K.M. Mehta, J.)
(swamy)